

AO 440 (Rev. 10/93) Summons in a Civil Action

United States District Court

SOUTHERN

DISTRICT OF

NEW YORK

JOSEPH MUSUMECI

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

MTD PRODUCTS INC., MTD PRODUCTS LTD.,
MTD HOLDINGS INC., MTD LLC and HOME
DEPOT U.S.A. INC.,

07 CIV. 7535
JUDGE KARAS

TO: (Name and address of defendant)

MTD PRODUCTS INC.-Reg. Agent: Terry R. Hollister, Esq., 5903 Grafton Road, Valley City, Ohio 44280 and
Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801
MTD PROUDCTS LTD - 97 Kent Avenue, Kitchener, Ontario N2G 3R2
MTD HOLDINGS, INC. - Agent: David J. Hessler, Esq. 6055 Rockside Woods Blvd., #200, Cleveland, Ohio 44131
MTD LLC.- Reg. Agent: Terry R. Hollister, Esq., 5903 Grafton Road, Valley City, Ohio 44280
HOME DEPOT U.S.A., INC., - Reg. Agent: New York Secretary of State, 41 State Street, Albany, New York 12231

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

LARKIN, AXELROD, INGRASSIA & TETENBAUM, LLP.

356 Meadow Avenue
Newburgh, New York 12550

thirty (30)

an answer to the complaint which is herewith served upon you, within _____ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(BY) DEPUTY CLERK

AUG 24 2007

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Index No. 07 CIV. 7535

JOSEPH MUSUMECI

Plaintiff(s) Petitioner(s)

Calendar No.

against

MTD PRODUCTS INC.

Defendant(s) Respondent(s)

AFFIDAVIT
OF
SERVICE

STATE OF DELAWARE, COUNTY OF: NEW CASTLE

Ss.:

The undersigned, being sworn, says: Deponent is not a party herein, is over 18 years of age and resides at Wilmington, DE

On 9/4/07 at 10:45 AM .M., at C/O THE CORPORATION TRUST CO. 1209 ORANGE ST. WILMINGTON, DE
deponent served the within

- ☒ summons and complaint
☐ subpoena duces tecum
☐ citation

on MTD PRODUCTS INC.

☒ defendant ☐ witness hereinafter called therein
☐ -espondent the recipient lamed

INDIVIDUAL 1. ☐ by delivering a true copy of each to said recipient personally; deponent knew the person so served to be the person described as said recipient therein.
 CORPORATION 2. ☒ a DELAWARE corporation, by delivering thereat a true copy of each to SCOTT LASCALA personally, deponent knew said corporation so served to be the corporation, described in same as said recipient and knew said individual to be PROCESS AGENT thereof
 SUITABLE AGE PERSON 3. ☐ by delivering thereat a true copy of each to a person of suitable age and discretion. Said premises is recipient's ☐ actual place of business ☐ dwelling place ☐ usual place of abode within the state.
 AFFIXING TO DOOR, ETC. 4. ☐ by affixing a true copy of each to the door of said premises, which is recipient's ☐ actual place of business ☐ dwelling place ☐ usual place of abode within the state. Deponent was unable, with due diligence to find recipient or a person of suitable age and discretion, thereat, having called there

MAILING TO RESIDENCE
 USE WITH 3 OR 4
 5A. ☐

Deponent talked to at said premises who stated that recipient ☐ lived ☐ worked there.
 Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a postpaid envelope properly addressed to recipient at recipient's last known residence, at and deposited said envelope in an official depository under exclusive care and custody of the U.S. Postal Service within New York State.
 Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a first class post paid envelope properly addressed to recipient at recipient's actual place of business, at

MAILING TO BUSINESS
 USE WITH 3 OR 4
 5B. ☐

in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State. The envelope bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerned an action against the recipient.

| | | | | | | | |
|--------------------------|--|--|--|-------------------------------------|--|---|--|
| DESCRIPTION | <input checked="" type="checkbox"/> Male | <input checked="" type="checkbox"/> White Skin | <input checked="" type="checkbox"/> Black Hair | <input type="checkbox"/> White Hair | <input type="checkbox"/> 14-20 Yrs. | <input type="checkbox"/> Under 5' | <input type="checkbox"/> Under 100 Lbs. |
| <input type="checkbox"/> | <input type="checkbox"/> Female | <input type="checkbox"/> Black Skin | <input type="checkbox"/> Brown Hair | <input type="checkbox"/> Balding | <input checked="" type="checkbox"/> 21-35 Yrs. | <input type="checkbox"/> 5'0"-5'3" | <input type="checkbox"/> 100- 130 Lbs. |
| | | <input type="checkbox"/> Yellow Skin | <input type="checkbox"/> Blonde Hair | <input type="checkbox"/> Mustache | <input type="checkbox"/> 36-50 Yrs. | <input type="checkbox"/> 5'4"-5'8" | <input checked="" type="checkbox"/> 131-160 Lbs. |
| | | <input type="checkbox"/> Brown Skin | <input type="checkbox"/> Gray Hair | <input type="checkbox"/> Beard | <input type="checkbox"/> 51-65 Yrs. | <input checked="" type="checkbox"/> 5'9"-6'0" | <input type="checkbox"/> 161-200 Lbs. |
| | | <input type="checkbox"/> Red Skin | <input type="checkbox"/> Red Hair | <input type="checkbox"/> Glasses | <input type="checkbox"/> Over 65 Yrs. [- I Over 6' | | <input type="checkbox"/> Over 200 Lbs. |

☐ Other identifying features:

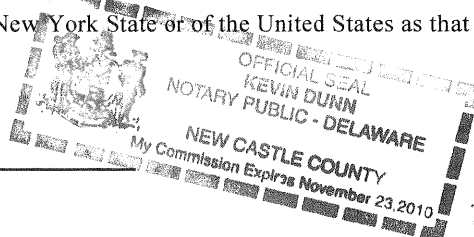
WITNESS FEES

\$ the authorizing traveling expenses ☐ was paid (tendered) to the recipient
 and one days' witness fee: ☐ was mailed to the witness with subpoena copy.

MILITARY SERVICE

I asked the person spoken to whether recipient was in active military service of the United States or of the State of New York in any capacity whatever and received a negative reply. Recipient wore ordinary civilian clothes and no military uniform. The source of my information and the grounds of my belief are the conversations and observations above narrated. Upon information and belief I aver that the recipient is not in military service of New York State or of the United States as that term is defined in either the State or in the Federal statutes.

Sworn to before me on 9/4/07



License No.

BARRY EVELAND

AFFIDAVIT OF SERVICE

**UNITED STATES DISTRICT COURT
Southern District of New York**

Index Number: 07 CIV 7535

Date Filed: 8/24/2007

Plaintiff:

Joseph Musumeci

vs.

Defendants:

MTD Products Inc., et al.

For:

LARKIN, AXELROD, INGRASSIA & TETENBAUM
356 Meadow Avenue
Newburgh, NY 12550

Received these papers on the 6th day of September, 2007 at 11:23 am to be served on **Terry Hollister, Esq., Registered Agent on behalf of MTD Products Inc., 5903 Grafton Road, Valley City, OH 44280.**

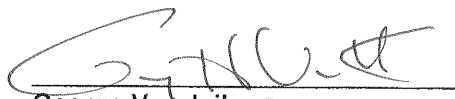
I, George Veselnik, being duly sworn, depose and say that on the **13th day of September, 2007 at 10:45 am,**

I:


Personally Served the within named person, **Terry Hollister, Esq., Registered Agent on behalf of MTD Products Inc.** with a true copy of the **Summons in a Civil Case and Complaint** with the date and hour endorsed thereon by me, pursuant to state statutes.

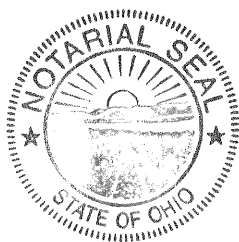
Description of Person Served: Age: 50, Sex: M, Race/Skin Color: Caucasian, Height: 6'1", Weight: 180, Hair: Gray, Glasses: N

I am over the age of 18 and have no interest in the above action.


George Veselnik
Process Server *George H. Veselnik*

Subscribed and Sworn to before me on the 20th day of September, 2007 by the affiant who is personally known to me.


NOTARY PUBLIC



DEBORAH L. DUCKWORTH
Notary Public
In and for the State of Ohio
My Commission Expires
April 16, 2011

Our Job Serial Number: 2007002831
Ref: 26927

Copyright 1997-2006 Database Services, Inc. - Process Server's Toolbox V5.9s

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

Court Services Inc.

5 Paula Court, Cornwall on Hudson, NY, 12520, (845) 534-4236 , Fax (845) 534-4295 Cell (914) 755-6088

DEADLINE: September 11, 2007

Received: 8/28/2007

Job #: 26928

Recipient:

MTD Products, LTD.

Documents: Summons In A Civil Action & Complaint

97 Kent Avneue, Kitchener, ON N2G 3R2

8/29/2007 ebck

8/29/2007 Borg is charging \$120.00

DILIGENCE

Date: SEP 05 2007 Time: 3:05 am pm Server: **Borg Process Servers Inc** Witness Fee: _____ Ck# _____

Served At: Above New Addr: _____

Served On: SEP 05 2007 Ed Henderson Title/Relationship: _____

Sex: male Race: white Hair: brown Age: 50 Height: 5'7" Weight: 135 Military: yes no
Addl. Desc: _____

Our Client: Larkin, Axelrod, Ingrassia, & Tetenbaum, L.L.P.

Client File No: 13081 PPS

356 Meadow Avenue, Newburgh, NY 12550

Bs number: 845-566-5345

Fax Number: 845-566-5148

Occupation: Attorney

Court: United States District Court Southern District of New York

Plaintiff: Joseph Musumeci

Defendant: MTD Products Inc. et al.

I ACKNOWLEDGE RECEIPT OF THE LEGAL DOCUMENTS LISTED
ABOVE AND CONFIRM THAT THE NAMED PARTY IS NOT CURRENTLY IN
ACTIVE MILITARY SERVICE. I FURTHER STATE I AM AUTHORIZED
TO ACCEPT ALL LEGAL PROCESS ON BEHALF OF THE INTENDED RECIPIENT

Rec'd By **X** Ed Henderson

Amount Recd: _____ Check # _____ Service Fee: _____ Commission(s): \$0.00

AO 440 (Rev. 10/93) Summons in a Civil Action

RETURN OF SERVICE

| | |
|--|-------------------------|
| Service of the Summons and Complaint was made by me ¹ | DATE SEP 05 2007 |
| NAME OF SERVER (PRINT) RICHARD HOEG | TITLE Process Server |
| Check one box below to indicate appropriate method of service | |
| <input checked="" type="checkbox"/> Served personally upon the defendant. Place where served: <u>97 Kent Avenue</u> <u>Kitchener, Ontario, Canada N2G 3R2</u> | |
| <input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: <u>Ed Henderson</u> <u>Vice-president - Finance</u> | |
| <input type="checkbox"/> Returned unexecuted: <u>CHANN JOURNAL</u> | |
| <input type="checkbox"/> Other (specify): _____ | |

STATEMENT OF SERVICE FEES

| TRAVEL | SERVICES | TOTAL |
|--------|----------|-------|
| | | |

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on SEP 12 2007
Date

[Signature]
Signature of Server
365 Evans Ave #604 Toronto, Ontario Canada
Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure

AFFIDAVIT OF SERVICE

**UNITED STATES DISTRICT COURT
Southern District of New York**

Index Number: 07 CIV 7535

Date Filed: 8/24/2007

Plaintiff:

Joseph Musumeci

vs.

Defendants:

MTD Products Inc., et al.

For:

LARKIN, AXELROD, INGRASSIA & TETENBAUM
356 Meadow Avenue
Newburgh, NY 12550

Received these papers on the 6th day of September, 2007 at 11:23 am to be served on **David Hessler, Esq., Registered Agent on behalf of MTD Holdings, Inc., 6055 Rockside Woods Blvd., Suite 200, Cleveland, OH 44131.**

I, Daniel Schuller, being duly sworn, depose and say that on the **7th day of September, 2007 at 11:00 am, I:**

Personally Served the within named person, **David Hessler, Esq., Registered Agent on behalf of MTD Holdings, Inc.** with a true copy of the **Summons in a Civil Case and Complaint** with the date and hour endorsed thereon by me, pursuant to state statutes.

Description of Person Served: Age: 65, Sex: M, Race/Skin Color: Caucasian, Height: 6'0", Weight: 200, Hair: Gray, Glasses: Y

I am over the age of 18 and have no interest in the above action.



Daniel Schuller
Process Server

Subscribed and Sworn to before me on the 20th day of September, 2007 by the affiant who is personally known to me.


NOTARY PUBLIC

TAMARA L. INGLERIGHT, Notary Public
In and for the State of Ohio
My Commission Expires March 20, 2012

Our Job Serial Number: 2007002830
Ref: 26927

AO 440 (Rev. 10/93) Summons In a Civil Action

RETURN OF SERVICE

Service of the Summons and Complaint was made by me¹

DATE

Sept. 7, 2007

NAME OF SERVER (PRINT)

Daniel Schuller

TITLE

Process Server

Check one box below to indicate appropriate method of service

Served personally upon the defendant. Place where served: 4055 Rockside Woods Blvd.
Suite 200, Cleveland Ohio 44131

Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: _____



Returned unexecuted



Other (specify): _____

STATEMENT OF SERVICE FEES

| TRAVEL | SERVICES | TOTAL |
|--------|----------|-------|
| | | |

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on Sept. 7, 2007

Date




Signature of Server

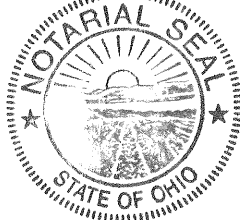
DANIEL SCHULLER

Subscribed and Sworn to before me on the 7th day
of September, 2007 by the affiant who is
personally known to me.

ProVest LLC
Address of Server
644 Linn Street, Suite 700
Cincinnati, OH 45203



NOTARY PUBLIC



DEBORAH L. DUCKWORTH
Notary Public
In and for the State of Ohio
My Commission Expires
April 16, 2011

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure

AFFIDAVIT OF SERVICE

**UNITED STATES DISTRICT COURT
Southern District of New York**

Index Number: 07 CIV 7535

Date Filed: 8/24/2007

Plaintiff:

Joseph Musumeci

vs.

Defendants:

MTD Products Inc., et al.

For:

LARKIN, AXELROD, INGRASSIA & TETENBAUM

356 Meadow Avenue

Newburgh, NY 12550

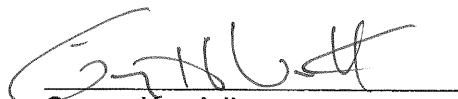
Received these papers on the 6th day of September, 2007 at 11:23 am to be served on **Terry Hollister, Esq., Registered Agent on behalf of MTD LLC., 5903 Grafton Road, Valley City, OH 44280.**

I, George Veselnik, being duly sworn, depose and say that on the **13th day of September, 2007 at 10:45 am,**

Personally Served the within named person, **Terry Hollister, Esq., Registered Agent on behalf of MTD LLC.** with a true copy of the **Summons in a Civil Case and Complaint** with the date and hour endorsed thereon by me, pursuant to state statutes.

Description of Person Served: Age: 50, Sex: M, Race/Skin Color: Caucasian, Height: 6'1", Weight: 180, Hair: Gray, Glasses: N

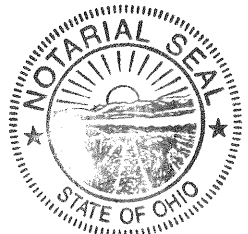
I am over the age of 18 and have no interest in the above action.


George Veselnik
Process Server

George H. Veselnik

Subscribed and Sworn to before me on the 20th day of September, 2007 by the affiant who is personally known to me.


NOTARY PUBLIC

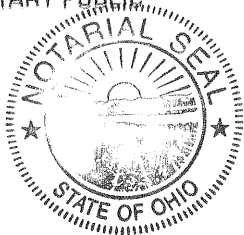


DEBORAH L. DUCKWORTH
Notary Public
In and for the State of Ohio
My Commission Expires
April 16, 2011

Our Job Serial Number: 2007002832
Ref: 26927

Copyright © 1992-2006 Database Services, Inc. - Process Server's Toolbox V5.9s

• AO 440 (Rev. 10/93) Summons in a Civil Action

| RETURN OF SERVICE | | |
|--|----------|----------------|
| Service of the Summons and complaint was made by me ⁽¹⁾ | DATE | 09/13/07 |
| NAME OF SERVER (PRINT) GEORGE H. Veselenik | TITLE | PROCESS SERVER |
| <i>Check one box below to indicate appropriate method of service</i> | | |
| <input checked="" type="checkbox"/> Served personally upon the defendant. Place where served: <u>5903 GRAFTON Rd</u> <u>Valley City Ohio</u> | | |
| G Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____ | | |
| G Returned unexecuted: _____ _____ _____ | | |
| G Other (specify): _____ _____ _____ | | |
| STATEMENT OF SERVICE FEES | | |
| TRAVEL | SERVICES | TOTAL |
| | | |
| DECLARATION OF SERVER | | |
| <p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on <u>09/13/07</u> <u>George H. Veselenik</u> Date Signature of Server</p> <p style="text-align: right;">ProVest LLC 644 Linn Street, Suite 700 Cincinnati, OH 45203</p> <p>Subscribed and Sworn to before me on the <u>13th</u> day of <u>Sept</u>, 2007 by the affiant who is personally known to me.</p> <p><u>Deborah L. Duckworth</u> NOTARY PUBLIC</p> <div style="display: flex; align-items: center;">  <div> <p>DEBORAH L. DUCKWORTH Notary Public In and for the State of Ohio My Commission Expires April 16, 2011</p> </div> </div> | | |

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

United States District Court
Southern District of New YorkAttorney:
LAI & T

Joseph Musumeci,

~~Plaintiff(s)~~
Plaintiff(s)

Index No.

07 CIV 7535

- against -

MTD Products, Inc., MTD Products LTD., MTD Holdings, Inc.,
MTD, L.L.C. and Home Depot U.S.A., Inc.,Defendant(s)
~~Respondent(s)~~AFFIDAVIT
OF SERVICESTATE OF NEW YORK: COUNTY OF Orange : ss:I, Edward A. Cole, Sr., BEING DULY SWORN DEPOSES AND SAYS DEPONENT IS NOT A PARTY
TO THIS ACTION AND IS OVER THE AGE OF EIGHTEEN YEARS AND RESIDES IN THE STATE OF NEW YORK.That on September 4, 2007 at 4:10 P. M., at 41 State Street, Albany, NYdeponent served the within ☐ summons ☐ with notice ☐ summons, Spanish summons and complaint, the language required by
☒ summons and complaint NYCRR 2900.2(e), (f) & (h) was set forth on the face of the summons(es)
☐ notice of petition and petition ☐ citation
☐ subpoena ☐ subpoena duces tecum ☐on: Home Depot, U.S.A., Inc. ☒ defendant ☐ respondent ☐ witness (hereinafter called the recipient) therein named.
through The Secretary Of State
INDIVIDUAL By Personally delivering to and leaving with said _____ a true copy thereof,A ☐
CORPORATION
B ☒and that he knew the person so served to be the person mentioned and described in said _____
By delivering to and leaving with Amy Lesch at 41 State Street,
Albany, NY, and that he knew the person so served to be the Designated Agent.SUITABLE
AGE PERSON
C ☐Service was made in the following manner after your deponent was unable with due diligence to serve the defendant in person:
By delivering a true copy thereof to and leaving with _____
a person of suitable age and discretion at _____, NY, the said premises being the
defendants--respondents (dwelling place) (usual place of abode) (actual place of business) within the State of New York.AFFIXING TO
DOOR, ETC.
D ☐By affixing a true copy thereof to the door of said premises, the same being the defendant's (dwelling place) (usual place of abode)
(actual place of business) within the State of New York.

Deponent had previously attempted to serve the above named defendant/respondent

1. Day Date Time m 2. Day Date Time m 3. Day Date Time m

Deponent spoke with _____ who stated to deponent that the said defendant(s) lived at
the aforementioned address, but did not know defendant's place of employment.MAILING TO
RESIDENCE
Use with C or D
E1 ☐Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a postpaid envelope properly addressed to defendant
at defendant's last know residence, at _____
and deposited said envelope in an official depository under the exclusive care and custody of the U.S. Postal Service within
New York State on 2007MAILING TO
BUSINESS
Use with C or D
E2 ☐
F ☐Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a first class postpaid envelope properly addressed to
defendant to defendant's actual place of business, at _____
in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State. The envelope bore the
legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication
was from an attorney or concerned an action against the defendant and mailed on 2007

DEPONENT STATES THAT THE INDEX # & FILING DATE WERE CLEARLY VISIBLE ON THE SUMMONS.

A DESCRIPTION OF THE DEFENDANT OR OTHER PERSON SERVED OR SPOKEN TO ON BEHALF OF THE DEFENDANT IS AS
FOLLOWS:VOID WITHOUT
DESCRIPTION
Use with A, B, C & D☒ Description ☐ Male ☒ White Skin ☐ Black Hair ☐ White Hair ☐ 14-20 Yrs. ☐ Under 5' ☐ Under 100 Lbs.
☒ Female ☐ Black Skin ☒ Brown Hair ☐ Balding ☒ 21-35 Yrs. ☐ 5'0"-5'3" ☐ 100-130 Lbs.
☐ Yellow Skin ☐ Blonde Hair ☐ Mustache ☐ 36-50 Yrs. ☒ 5'4"-5'8" ☐ 131-160 Lbs.
☐ Brown Skin ☐ Gray Hair ☐ Beard ☐ 51-65 Yrs. ☐ 5'9"-6'0" ☒ 161-200 Lbs.
☐ Red Skin ☐ Red Hair ☒ Glasses ☐ Over 65 Yrs. ☐ Over 6' ☐ Over 200 Lbs.A \$ 40.00 processing fee was paid (check # 56682) to The Secretary of State with service
being made pursuant to Section BCL 306. Two copies of the above referenced matter were
served.MILITARY SERVICE
☒I asked the person spoken to whether defendant was in active military service of the United States or of the state of New York in any
capacity whatsoever and received a negative reply. Defendant wore ordinary civilian clothes and no military uniform. The source of my
information and the grounds of my belief are the conversations and observations above narrated.Sworn to before me this 12 day of September 2007
Cheryl Kessler
(Notary Public)

PLEASE PRINT NAME BELOW SIGNATURE

Edward A. Cole, Sr.
Court Services, Inc.Cheryl Kessler
New York State Notary Public
Dutchess County #01KE6110007
Commission Expires 5/24/2008